

LABOUR DEPARTMENT

The 8th April, 1982

No. 9(1)82-8 Lab/2741.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of The Haryana Roadways, Gurgaon.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD.

Reference No. 171 of 1981

between

SHRI MANOHAR LAL, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S. HARYANA ROADWAYS, GURGAON.

Shri S. P. Gupta, for the workman.

Shri K. L. Piplani, for the respondent management.

AWARD

This reference No. 171 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/GGN/5/81/26088, dated 22nd May, 1981, under section 10(i) (c) of the Industrial Disputes Act, 1947, existing between Shri Manohar Lal, workman and the respondent management of The Haryana Roadways, Gurgaon. The terms of the reference was:—

Whether the termination of service of Shri Manohar Lal was justified and in order? If not, to what relief is he entitled?

On receiving this reference, notices were issued to the parties, the parties appeared and filed their pleading. The case of the workman according to the demand notice and claim statement is that he joined the service on 13th April, 1967 as Conductor and terminated on 17th May, 1976. The order of termination was void illegal because the enquiry officer was biased and was in favour of the respondent. The enquiry officer was un-competent to hold the enquiry. No due opportunity was provided to the workman. No time was given to call the defence witnesses. The enquiry officer assure the workman to admit the guilt and there will be no harm to him. No proper record was

produced before the enquiry officer to prove the charges and no independent witnesses were produced to prove the prosecution. The enquiry officer failed to call the relevant record inspite of repeated requests. The charges levelled against the workman were false and not proved in the enquiry file. The workman was not allowed to be represented by his co-workman or by some co-union. The enquiry officer being the departmental officer took the full advantage of the ignorance and representedness of the workman.

The case of the respondent is that the order of termination was perfect, legal and valid and was passed after complying with all the principles of natural justice. The workman was charge-sheeted to which the reply was received. The Traffic Manager, Haryana Roadways was appointed as enquiry officer to conduct the enquiry against the workman. The workman was given full opportunity to defend himself. He was found guilty by the enquiry officer. Shows cause notice was also issued which was replied by the claimant and after considering all the record the punishing authority took the right view in terminating the services of the workmen.

On the pleadings of the only one issue as per reference was framed:—

- (1) Whether the termination of services of the workman was proper, justified and in order? If not, to what relief is he entitled?

My findings on issues is as under:—

ISSUE NO. 1 :—

The representative of the respondent argued that the claimant was in the service of the Haryana Roadways, Gurgaon since 1967 and was charge-sheeted,—vide Ex. M-1 and M-2. The Claimant replied the same,—vide Ex. M-3. After this reply the appointing authority appointed the enquiry officer Shri Ram Gopal, Traffic Manager, Delhi to enquire the charges against the workman,—vide Ex. M-4. The enquiry officer held the enquiry. The enquiry proceedings is Ex. M-9 in which the enquiry officer give the full opportunity to the claimant to defend himself. The claimant cross examined the witnesses before the enquiry officer and the claimant closed his defence on 7th April, 1975 and signed the same. After this enquiry the enquiry officer prepared the enquiry report which is Ex. M-10 and out of three charges the

claimant was found guilty in charges No. 1 and 3 and the enquiry report was sent to the General Manager, Haryana Roadways, Gurgaon. After receiving the enquiry report the General Manager, Haryana Roadways issued the show cause notice,—vide Ex. M-5 for which the claimant replied,—vide Ex. M-6. The charges against the claimant was that he issued tickets to three passengers from Delhi to Alwar worth Rs. 21.13 while he charged from them a sum of Rs. 28.70. In this way he pocketed Rs. 2.57 by issuing less tickets to the passengers. He also charged Rs. 7.90 from 15 passengers from Delhi to Alwar and issued tickets of Rs. 7.82 per passenger and issued less tickets to the tune of Rs. 1.20 and committed fraud this was done at Delhi Bus stand on advance booking duty on 22nd September, 1974 by booking vehicle No. HRG 2480, which was checked by Shri Om Parkash, Inspector, Haryana Roadways. On 15th October, 1974 the claimant booked the vehicle No. HRG 3187 for Delhi Alwar which was checked by Shri Rama Nand and found that three passengers were issued less tickets to the tune of Rs. 3.15 and in this way pocketed this amount. On 19th October, 1974 the claimant booked vehicle No. HRG 2083 which was checked by Shri Ram Parkash Inspector in which he found that he charged Rs. 9.50 per passenger from Delhi to Pilani and issued tickets of Rs. 9.37 per passenger and committed a fraud of Rs. 1.30 per passenger and in this way issued tickets to 10 passenger from Delhi to Pilani. The General Manager Haryana Roadways, Gurgaon after considering the charge-sheet, the reply, the enquiry proceedings and enquiry report in respect of the charges levelled against the workman and also keeping in view the previous record of the claimant as detailed in the show cause notice, rightly terminated the service of the claimant, and the order of termination is in order and punishing authority is justified in passing the order as such persons spoils the department name in the public. The department had the bad name due to such persons' behaviour and if such action are not taken against these persons they cannot be set right.

The workman's representative argued on this issue that there is no issue before this Court about the enquiry. The respondent should have pressed this Court for framing the issue of enquiry. When they have properly enquired the matter under the rules because the respondent knew this fact that there is no such proper enquiry with them to put up before this Court

so they did not press for framing the issue for the enquiry whether proper enquiry was conducted by the respondent. The issue is whether the termination is justified and in order. The workman was appointed on 13th April, 1967 and working properly as conductor. There is a bad custom in the department that every checking Officer demand something from these conductors and if any body did not fulfil their demands they do some thing against such persons and he is the victim of such custom. He was appointed in the year 1967 and record was quite normal as compare to the other conductor. He was posted as advance booking clerk at Delhi on the various routes and these mistakes on which he was charge-sheeted by the department, are minor mistakes which are due to so many reasons. Some time the booking clerk did not have the proper valued tickets with him and in the rush of work as it is general at the Delhi Bus Stand some mistakes are done without any consciousness. The charge-sheet issued to the workman was false and frivolous. The appointment of the enquiry officer was also not according to the rules. The workman replied the same which was not considered by any authority. The enquiry officer did not issue any letter to the claimant for the enquiry. There is no such letter at the enquiry file which was issued by the enquiry officer for conducting the enquiry. The enquiry officer called the workman from the duty and recorded the statement. The enquiry officer has admitted in his cross examination as MW-2 that no such letter was issued to the claimant. He has also admitted that the statements of the respondent witness and the workman were recorded for each charges simultaneously. First he recorded the statement of the inspector then the workman for one charge and for other charge he recorded the statement of another inspector and then the workman and finished the enquiry in one day so he did not give the opportunity or time to claimant for his defence for the case. He further argued that the enquiry officer did not call the record which was very necessary to explain the charges of the claimant. The workman also made an application in this Court to call the record of the Roadways to prove his case that he deposited the excess money with the weigh bill as he has stated in his claim statement and gave the excess charges money to the conductor of the vehicle. The conductor of the vehicle Shri Prem Chand has appeared as WW-1 and admitted this fact in his statement that on 22nd September, 1974 he paid Rs. 2.47P

to him for bus No. HRG 2480 on which he was conductor at the time. But the enquiry officer did not care to call the relevant records and the proper persons to prove the case in the enquiry. It is very clear from the statement of WW-1 that he deposited the excess money with the weigh bill as he has stated in his statement and when the conductor says before this Court that he deposited this amount for which the workman has charge-sheet with the weigh bill with the cashier, it is clear that this charge was baseless and without any footing. In this way the enquiry officer did not call the record. The workman also called the clerk of the Haryana Roadways with the relevant record but the clerk concerned came as witness WW-3 and stated before this Court that the relevant record had been destroyed with the permission of the Government from 1974 to 1977 and the same is not available. According to the claim statement he has deposited all the excess amount in the Government Treasury and give the voucher and weigh bill and called the same in the Court which were not produced by the respondent clerk as WW-3. It shows that plea taken by the workman in his claim statement is correct and the enquiry held by the enquiry officer was not correct because without observing and seeing the relevant record how the enquiry officer came to the conclusion that the claimant was guilty of the charges. The enquiry officer has admitted in his cross examination as MW-2 that he did not summons the record. He only recorded the statement of the Inspector who reported against the claimant. It shows that the enquiry made by the enquiry officer was not proper and fair. He further argued that according to the law the enquiry officer or the General Manager must have given the enquiry report with the show cause notice so that the claimant may reply after going through the report of the enquiry officer and given the proper answer to the enquiry officer's report which was denied to the claimant and which is against the principles of natural justice. So the order passed by the punishing authority on a biased report cannot be held proper and justified. So the order of punishing authority was not justified and proper.

After hearing the arguments of both the parties, and carefully going through the file, I am of the view that the claimant was not given the proper opportunity to prove his case and the enquiry was not properly done by the enquiry officer. The enquiry officer should have called the relevant record and after satisfying

himself should given the proper findings of the charge-sheet because the enquiry as admitted before me that he did not call any record and I think the claimant might have requested for calling the relevant record as he has made the application in this Court to summon the relevant record but the enquiry officer did not summon the relevant record and gave his findings only on the basis of the Inspector's statement which is not proper and the orders based on this enquiry are also not justified and fair. As the claimant was terminated,—vide order dated 17th May, 1975 and after that he filed this demand notice on 18th November, 1980 after a long time so he is not entitled for back wages. He is entitled for his reinstatement with continuity of service but without back wages, due to his own negligence for filing the demand notice after a lapse of four years.

This be read in answer to this reference.

Dated : 1st March, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 625 dated 11th March, 1982

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)82-8Lab/3020.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s. Oriental Industries, Mathura Road, Faridabad:—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA FARIDABAD.

Reference No. 127 of 1981

Between

SHRI SHRI RAM, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S. ORIENTAL INDUSTRIES, 12/7, MATHURA ROAD, FARIDABAD.

Shri Darshan Singh, for the workman.

Shri P. C. Luthra, for the respondent management.

AWARD

This reference No. 127 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana, —vide his order No. ID|FD|56-81|16760, dated 25th March, 1981, under section 10(i) (c) of the Industrial Disputes Act, 1947, existing between Sh. Shri Ram, workman and the respondent management of M/s. Oriental Industries, 12/7, Mathura Road, Faridabad. The terms of the reference was:

Whether the termination of services of Shri Shri Ram was justified and in order ? If not to what relief is he entitled ?

On receiving the order of reference, the notices were issued to the parties. The parties appeared in the Court and filed their pleadings. The case of the workman is that he was terminated from service from 4th February, 1981 without assigning any reason though he was an old employee and joined the service on 21st July, 1974 as power press Operator @ Rs. 314 per month. So he is entitled for his reinstatement with full back wages and continuity of service.

The case of the respondent according to the written statement is that the workman left the services of his own by absenting himself w.e.f. 25th June, 1980. The management waited for him upto 30th October, 1980 and finally struck off his name from the roll. Therefore, this case is not of termination, but of self abandonment. So the reference is bad in law and admitted the date of appointment and salary of the workman. Further stated that the management entrusted his works to other workman and the management does not need his services.

On the pleadings of the parties, the following issues were framed :—

- (1) Whether the workman left his service of his own accord by way of remaining absent? If so, to what effect?
- (2) Whether the termination of services of the workman is proper justified and in order ? If not to what relief is he entitled ?

My findings on issues are as under :—

ISSUE NO. 1 :

The representative of the respondent argued on this issue that the workman was working with the respondent from 5 or 6 years as stated by

MW-1, Shri P. C. Luthra in his statement and he remained absent from June, 25 onwards and he was marked absent upto October end and after this his name was struck off. The copies of attendance Register are Ex. M-1 to M-6 showing the absence of the workman after striking of the name of the workman. The workman came in January, 1981 for demanding his dues and he was told that his name was struck off and he can take his dues from the respondent. The respondent witness further stated in his statement that the workman came after a week with a certificate, but he was told as above that his name was struck off from the roll. So the name of the workman was struck off from the roll after a long absence without any information and application for leave and the respondent was justified in striking of the name of the workman after such a long absence. So the workman voluntarily abandoned his service of his own.

The representative of the workman argued on this issue that the workman was in the service of the respondent from the year 1974 and there was no complaint against the workman in a long time service. He went home on 11th June, 1980 with a 10 days sanctioned leave and there he fell ill with a serious disease for which the workman send a medical certificate with application. The copy of the certificate is Ex. W-1 in which the doctor has recommended a rest of six months and 11 days from 6th July, 1980 to 6th January, 1981. The certificate is dated 26th July, 1980 which was sent to the respondent but the respondent did not reply for same. He further argued that as argued by the representative of the respondent they struck off the name of the workman after a long absence, but they have failed in their duties when the workman went home with a ten days leave. It was the duty of the respondent to ask the workman about his absence on duty. The respondent did sent a single letter to the workman even after such a long illness. Even after such a long illness, there is no correspondence shown by the respondent in the Court with the workman for this period and they struck off the name of the workman without knowing the reason of the absence because they wanted to get rid of such an old employee who is claimant of so many benefits from the respondent. He further argued that the workman came in the factory after receiving the fitness certificate. The copy of which is Ex. W-2 which is also admitted by the respondent witness MW-1 in his statement that the workman came in the factory in January,

1981 and he again come in the factory with a certificate, but he was told that his name had struck off. It was the duty of the respondent to take the fitness certificate and enquire whether the workman was actually ill or he has given the false certificate but the respondent made no enquiry and simply denied the job to the workman which cannot be said the abandonment of service voluntarily. The respondent had failed in his duty and the workman has not abandoned his job voluntarily as he sent the medical certificate with leave application which was not answered by the respondent.

After hearing the arguments of both the parties, and going through the file, I am of the view that the workman was an old employee of the respondent and they should not struck off the name in the way they have done. They should have asked the workman about his absence and if they find the reason un-reasonable they can struck off the name of the workman. The respondent have struck off the name of the workman without going through the fact. They should have sent the letter to the workman for knowing the reason for his absence. So the respondent has failed to do the same and they have simply struck off the name of the workman, which is not voluntarily abandonment of service of the workman. So the issue is decided in favour of the workman and against the respondent.

ISSUE NO. 2 :

After deciding the issue No. 1 in favour of the workman that the workman has not abandoned his job voluntarily. It is clear that the respondent has terminated the services of the workman without any justification and without any proper order. So the workman is entitled for his reinstatement with full back wages and continuity of service.

This be read in answer to this reference.
Dated : 3rd March, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endst. No. 661, dated 19th March, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana,

Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)82-8 Lab|3021.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s. B. R. Engineering Industries (P) Ltd., 14, Mile Stone, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD.

Reference No. 476 of 1980
Between

SHRI SALEEM AHMED, WORKMAN, AND THE RESPONDENT MANAGEMENT OF M/S. B. R. ENGINEERING INDUSTRIES, (I) LIMITED, 14 MILE STONE, MATHURA ROAD, FARIDABAD.

Shri Darshan Singh, for the workman.
Shri H. R. Dua for the respondent-management.

AWARD

This reference No. 476 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID|FD|178|80| 53074, dated 14th October, 1980, under section 10(i) (c) of the Industrial Disputes Act, 1947, existing between Shri Saleem Ahmed, workman and the respondent-management of M/s. B. R. Engineering Industries (P) Limited, 14, Mile Stone, Mathura Road, Faridabad. The terms of the reference was :—

Whether the termination of services of Shri Saleem Ahmed was justified and in order ? If not, to what relief is he entitled ?

After receiving this reference notices were issued to the parties. The parties appeared and

filed their pleadings. The case of the workman according to his demand notice is that he joined the service on 12th December, 1978 and terminated on 27th April, 1980 without any reason and cause shown to the workman. He was drawing Rs. 425 per month. He has requested for the reinstatement with full back wages and continuity of service.

According to the written statement of the respondent, the case of the respondent is that the workman abandoned the job of his own and after the abandonment he settled the claim and the demand notice is false and baseless. There is no termination of the workman and he has abandoned the service of his own.

On the pleadings of the parties, the following issues are framed :—

- (1) Whether the workman abandoned his service voluntarily, and therefore, it is case of abandonment of service ?
- (2) Whether the termination of service of the workman is proper justified and in order? If not to what relief is he entitled?

My findings on issues are as under :—

ISSUE NO. I :—

The representative of the respondent argued on this issue that the workman joined the service on 2nd December, 1978 as Turner at the salary of Rs. 425 per month. As stated by the respondent witness Shri P. N. Sharma as MW-1, the applicant worked up to 27th April, 1980 and 28th April was the holiday. The workman did not attend the duty afterwards and came on 16th May, 1980 to get his full and final which is Ex. M-1 and M-2. The witness has stated that he told to the management that he has started his workshop and working with his brother. So his name was struck off from the rolls due to his absence from duty. He further argued as stated by the respondent witness the respondent did not receive any application or medical certificate of the workman in the factory because he was absent without information and leave so his name was struck off from the rolls of the company on 16th May, 1980 and not terminated the services of the workman. When the workman has taken his full and final as admitted by the workman that he has taken the money for the voucher Ex. M-1 and M-2 so he has no claim as demanded in the demand notice.

The representative of the workman argued that as stated by the workman as WW-1 he went home on 27th April, 1980 as 28th was the holiday and he was to join the duty on Tuesday and he has the intention to come back on his duty, but he fell ill and sent an application for leave with medical certificate. The copy of which is Ex. W-2 in which the Doctor has recommended the rest from 28th April, 1980 to 7th May, 1980. It was sent through UPC which is Ex. W-1 dated 28th April, 1980. The certificate is also dated 28th April, 1980 which shows that the workman sent this medical certificate along with the application on 28th April, 1980 which was received in the respondent factory. Although the respondent has denied this fact in his written statement and in the statement of witness but this fact is established that the workman sent leave application with medical certificate through U.P.C. Ex. W-1 and when after recovery from the illness came back with a fitness certificate the respondent refused to accept the workman on duty. He further argued that the workman was a permanent and old employee of the respondent and they should not have done in the way what they have done in respect of this workman. In this case the workman sent the leave application with medical certificate and if he had not submitted the same it was the duty of the respondent to send the letter to the workman for reason of his absence but the respondent issued no such letter to the workman for asking him about his absence and when the workman came after the recovery of his illness he was denied the job. The respondent should have called the explanation of the workman for his absence and if it was satisfactory, they should have taken the workman on duty. The respondent has failed in his duty for an old and permanent employee which was very legal in the eye of law. The workman used to go at the factory gate up to 24th June, 1980 and on 18th May, 1980 they paid the salary of the last month for the month of April, as shown in Ex. M-1 and M-2. The workman was not paid any compensation for his long service. So it is not abandonment of service voluntarily and the workman, as admitted by the respondent witness of the respondent approached the respondent and as stated by the workman in his statement that he tried to contact the Director of company but he was out of station to Calcutta and the manager refused to give the duty. He further argued that it is not a case of voluntarily abandonment of service, but a termination.

After hearing the arguments of both the parties, and carefully going through the file, I am of the view that the workman had not abandoned the service voluntarily because he sent the medical certificate dated 28th April, 1980 under the UPC which is Ex. W-1 and W-2, clears the position for that the workman fell ill at the home and sent the medical certificate. It is a thing which can be believed without any doubt. A person can fall ill and cannot come on duty. It was the duty of the respondent company to send the letter to the workman before striking out the name of the workman from the roll. The respondent did not send any letter to the workman for his absence and when the workman came to join his duty he was not allowed to join his duties. The workman is paid only one month pay up to 28th April, 1980 and the amount of earned leave Rs 135 which the workman has admitted in his statement that the respondent called him from the gate for the payment of wages and paid the wages only which was due to him. The evidence of the respondent did not clear the position that the workman abandoned his service on his own. So the issue is decided against the respondent and in favour of workman.

ISSUE NO. 2 :

When issue No. 1 has been decided in favour of the workman that he has not voluntarily abandoned his service and he was terminated from the service without any legal reason. So it is clear that the workman was terminated without assigning any reason and the workman is entitled for his reinstatement with full back wages and continuity of service.

This be read in answer to this reference.

Dated the 3rd March, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endstt. No. 662, dated 19th March, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)82-8 Lab/3022.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Khadi Gram Udyog Mandal, Kurukshetra.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA FARIDABAD.

Reference No. 95 of 1981

between

SHRI RANDHIR DEV SHARMA, WORMAN AND THE RESPONDENT MANAGEMENT OF M/S. KHADI GRAM UDYOG MANDAL, KURUKSHETRA

Present:—

Shri Rajeshwar Nath, for the workman.
Shri Surinder Kaushik, for the respondent management.

AWARD

This reference No. 95 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/Amb./16-81/8689, dated 17th February, 1981, under section 70(i) (c) of the Industrial Disputes Act, 1947, existing between Shri Randhir Dev Sharma, workman and the respondent management of M/s. Khadi Gram Udyog Mandal, Kurukshetra. The terms of the reference was :—

Whether the termination of services of Shri Randhir Dev Sharma was justified and in order? If not to what relief is he entitled?

After receiving this reference notices were issued to the parties. They appeared and filed their pleadings. According to the demand notice the case of the applicant is that he joined the service of the respondent on 23rd September, 1978 as clerk and removed on 8th June, 1980 without any notice or charge-sheet or enquiry. So he is entitled for the reinstatement with full back wages and continuity of service.

The case of the respondent, according to the written statement is that the institution is under Khadi Commission Board and abide by the by-law

of the institution and a Mandal Sewa Niyamawali applicable for the services of the workman. Apart from other condition of employment the basic condition is that drinking of alcohol and taking intoxication items is basically prohibited and no employee so employed by the Mandal can take or use such things while on duty or in the premises of the Institution. The claimant has taken the liquor on 8th June, 1980 and he was caught red-handed, for which he gave in writing and tendered apology. Keeping in view the admission of the applicant to take liquor on 8th June, 1980, the respondent accepted the resignation on 11th June, 1980 and relieved from duty. So it was not termination and did not come under section 2(a) of the Industrial Disputes Act, 1947 because section 2-A covers the cases where there is retrenchment, termination or dismissal, but the case of resignation is not covered under section 2(a) of the Industrial Disputes Act.

On the pleadings of the parties, the following issues were framed:—

- (1) Whether the claimant has resigned his job voluntarily? If so to what effect?
- (2) Whether the termination of service of the workman is proper justified and in order? If not to what relief is he entitled?

My findings on issues are as under:—

ISSUE NO. 1 :—

The representative of the respondent argued on this issue that the claimant was an employee of the respondent and as stated by MW-1 Shri Sunder Lal, Secretary of the respondent institution, he received a telephone on 8th June, 1980 at 11.30 A.M. of the Accountant Shri Puran Chand from the office that some persons are drinking alcohol and you should come and see the happenings. So the witness went there along with Shri Parshotam and Shri Krishan Lal, the employee of the respondent and found Shri Ram Man, Daya Ram, Ram Parshad and Randhir Dev Sharma in a drunken position and unconsciousness. They first decided to call the police and hand over these persons, but for the bad name of the institution they called the medical officer Dr. Surinder Gaur and got examined the claimant. The certificate in this respect is Ex. M-1. The doctor declared the claimant under the influence of alcohol, then they waited up to

4.30 p.m. When the claimant and other came into consciousness and they admitted their fault and gave in writing the resignation Ex. M-2 and his resignation was accepted and information sent,—vide Ex. M-4. The postal receipts are Ex. M-5 and M-6. The claimant was ordered to hand over the charge—vide Ex. M-7. The claimant sent the letter Ex. M-8 for clearing his accounts and his accounts were cleared,—vide Ex. M-9 and the claimant took his dues,—vide Ex. M-10 and M-11. He further argued that the claimant had admitted Ex. M-9 to M-11 in the Court which clears the position that he took his account without any hesitation. It was due to his resignation with his willingness. He further argued that the claimant has also admitted the fact of his resignation in his rejoinder though in moulded story that it was taken at the police station under duress. The claimant had not proved the duress before this Court. When he admits the resignation under duress and does not prove the duress, it clears that he resigned of his own will. He has mentioned his story of alcohol in the way in his rejoinder that he was offered soft drinks along with other workmen and they drank thinking it a Coca-Cola and they fell un-conscious and they were taken to police station. There they were beaten and made to sign the papers. It is also admission in another way. It is admitted fact that they took the alcohol. The claimant has put the story in his own statement as WW-1 which cannot be believed, because he has not mentioned this fact in his demand notice which was the first opportunity to the claimant to give his whole story. He further argued that the workman has taken the plea of union activities because he was the office-bearer of the employee union but the story of alcohol is very clear even from his rejoinder and statement and also the workman has admitted the resignation. It clearly shows that the workman resigned of his own accord due to his own fault and the respondent accepted the resignation according to their rules framed as Mandal Sewa Niyamawali, which is applicable for the condition of service of the workmen. So it is clear that the claimant resigned from his job voluntarily. The representative of the workman argued that the claimant was a permanent employee of the respondent and on 8th June, 1980 he was called from the house as stated by the workman Shri Randhir Dev as MW-1, for loading a truck because it was Sunday on that day, and he with other workmen was called in the office and given

the soft drink to drink by which they fell unconscious and taken to the police station and there they were beaten and got signed the papers. It was done due to union activities of the workman and due to the enmity with the Secretary Shri Sunder Lal since long. The workman was the General Secretary of the Khadi Karta Trade Union, Kurukshetra. The workman has produced Ex. W-1 to Ex. W-9 and mark "A" to "U", the document which prove that he was the General Secretary of the Union and he used to raise the demand notice of the employee of the Khadi Employees and showing that he sent the information about these incidents to the Chairman of the Khadi Board and other authorities. So he was victimised due to the Union activities and he was removed from the service due to personal enmity with the Khadi Board institution with Shri Sunder Lal.

After hearing the arguments of both the parties and going through the file, I am of the view that the respondent has proved their case fully well and the claimant has also supported their case by giving the unconscious story in the rejoinder and in his own statement. The story of the claimant cannot be believed as true, in the presence of solid document given by the respondent. The medical certificate of the claimant Ex. M-1 cannot be disbelieved. The claimant has denied his signature in the Court but admit in his rejoinder that it was obtained under duress at the police station. The claimant cannot prove the duress in the Court. So it can not be believed that it was taken under the duress when he sent a letter Ex. M-8 to the respondent to clear his accounts and he accepted through Ex. M-9 to M-11 which were willingly taken by the claimant. If he had not resigned willingly then why he taken the amount of his accounts by sending the letter Ex. M-8 to the respondent for clearing his accounts. It clearly shows that he resigned himself and the story of the alcohol of the respondent is quite correct in the above circumstances. So the workman resigned his job voluntarily so the issue is decided in favour of the respondent and against the workman.

ISSUE NO. 2 :—

Issue No. 2 is as per reference. After deciding issue No. 1 in favour of the respondent, the reference does not come under section 2(a) of the Industrial Disputes Act and the reference is bad in law, because the workman resigned his job voluntarily and there is no termination.

So this issue is also decided in favour of the respondent and against the workman and the workman is not entitled to any relief.

This be read in answer to this reference.

Dated the 3rd March, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad

Endorsement No. 663 Dated 19th March, 1982

Forwarded (four copies) to the Commissioner & Secretary to Government Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad

No. 9(1)82-8 Lab./3023.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Municipal Committee, Gurgaon.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 144 of 1981

between

SHRI CHHANNU RAM, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S MUNICIPAL COMMITTEE, GURGAON
Present:—

Shri Shambhu Dayal, for the workman.
Shri S. K. Chadda, for the respondent management.

AWARD

This reference No. 144 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID|GGN|105|80|18460, dated 2nd April, 1981, under section 10(i) (c) of the Industrial Disputes Act, 1947, existing between Shri Chhannu Ram workman and the respondent management of M/s.

Municipal Committee, Gurgaon. The terms of the reference was:—

Whether the termination of services of Shri Chhannu Ram was justified and in order? If not, to what relief is he entitled?

Notices were sent to the parties. On receiving this order of reference, the parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that he is serving the Municipal Committee, Gurgaon as Safai Mazdoor for the last 15 years without any complaint in the service. The claimant was elected as President of IV Class Registered Trade Union on 25th March, 1979 and raised a demand of the Safai Mazdoor employees before the Administrator, Municipal Committee, Gurgaon, on which the Administrator annoyed. On 24th April, 1979 the Administrator suspended the workman without any reason and gave an charge-sheet on 25th May, 1979 for the absence from duty on 24th April, 1979 at 7.40 a.m. The charge-sheet contained no specific date, place of assurance/duty and place of response on that date. The charge-sheet was replied by the workman on 4th June, 1979 and explained the true fact with full circumstances. The administrator Smt. Shakuntla Chaudhry made her mind to deal the claimant with an iron hand and did not take any step to have a preliminary enquiry and to call for explanation of the conduct or alleged negligence at all. The Administrator was predetermined and vindictive to teach the claimant a lesson for taking part for union members and appointed the enquiry officer Shri Bhim Singh, Overseer who remained partial and under her thumb-impression throughout. The enquiry officer without supplying any material, list of witnesses or any discriminatory articles, had called upon the workman to attend the enquiry on 7th July, 1979 at 11.00 a.m. The workman produced some affidavits of some respectable of the alleged area and requested the enquiry officer to summon them but he took no action. Even those affidavits are not considered by the enquiry officer. The workman produced the co-workers who had completed the works allotted to them on that day and they had voluntarily deposed that the workman was also present and worked with them on that day. The Enquiry Officer relied upon some extraneous matter and document the copies of which were never supplied to the workman. The Enquiry Officer was biased and prejudice. The workman had

sought permission to engage a counsel in the enquiry but the enquiry officer turned down the request of the workman with a plea that the Administrator is against the engagement of a counsel. Neither the enquiry officer nor the Administrator took trouble to provide a copy of enquiry report and allied documents to the workman upto the last in spite of the repeated requests. The Administrator, Smt. Shakuntla Chaudhry, who was biased, vindictive and predetermined to teach lesson to the workman had sent a letter dated 28th July, 1979 which contained her findings and a proposed for workman termination for service. The workman was given only three days time to reply the show cause notice in which it was given that "Why his services may not be terminated being found absent on 24th April, 1979 at 7.40 a.m. which is negligency on his part." In fact it is a very severe punishment of 10/20 minutes whereas it was not so. It is evidence on the file that the Administrator had found the claimant with Phalta in the adjoining area of his beat area where co-workers were also on duty with the claimant. But this evidence was neglected. He further stated that the claimant filed an appeal against this order which was dismissed by the Collector, Gurgaon. Through the Collector, Gurgaon in his order has stated that the workman was coming from 9 street with a Falta in the adjoining Mohalla near Dharamshala. In fact this area was alleged to the workman with other workman to clean the area and the duty was allotted by Shri Babu Lal, Sagai Daroga. The fact is on the file but it had been ignored throughout. So the workman was illegal terminated by the respondent management and he is entitled for his reinstatement with full back wages and continuity of service. The case of the respondent according to the written statement is that this Court has no jurisdiction to try this case. The demand notice is not maintainable and it is barred due to the final decision of the appellate authority. The claimant was negligent during his service and was duly warned by the Administrator and it was not within the knowledge of the respondent about being President of IV Class employees Union and had no status of protected workman. There was no grudge or ill-will against the workman. The demand if any relating to A.D.A. was meant for all the employees of the Municipal Committee and not only for the workman. The claimant was suspended on 24th April, 1979 due to his absence from duty from his beat and a regular enquiry was constituted against the claimant in this regard

The enquiry officer hold the charges against the workman having been proved by the evidence produced by the parties and after that the services was terminated after giving the sufficient time. The claimant filed an appeal on 1st July, 1979 against the termination order to the Collector, Gurgaon as provided in the Haryana Safai Mazdoor Service Rules, 1976, which was dismissed on 3rd December, 1979 and was final and binding on the workman. The termination was in order and just by giving natural justice to the workman and as per section 26 of the Haryana Municipal Safai Mazdoor Services Rules, 1976. Hence the Court has no jurisdiction to try this case in view of the special provision with regard to the services of the Safai Mazdoor as such the present case does not fall under the Industrial Disputes Act. The claimant was absent from duty on 24th April, 1979 so the action was contemplated against him and have no relevancy with the demand of A.D.A. of the employees. The claimant made no allegation about the enquiry officer being interested or under the thumb-impression of the Administrator either in writing or orally to any authority. Earlier to the appointment of Shri Bhim Singh as an enquiry officer, Shri Krishan Lal Secretary was appointed as Enquiry Officer by the respondent but at the request of the claimant the enquiry officer was changed. The claimant was given sufficient time for production of evidence before the enquiry officer and the enquiry officer had given the workman all the necessary documents and material before him in the said enquiry. The affidavits filed by the claimant were also placed on the file of the enquiry officer and in fact the affidavits produced before the enquiry officer were no affidavits in the eye of law, and the same had not been signed by the deponents. So, no reliance can be placed when they are not legal. The claimant was terminated after a proper domestic enquiry and the orders of termination were justified and the reference may be rejected.

On the pleadings of the parties, the following issues were framed:—

- (1) Whether the termination of services of the workman is proper, justified and in order ? If not, to what relief is he entitled?

My findings on the issues is as under :—

ISSUE NO. 1 :—

The representative of the parties in this reference did not press for the issue of proper enquiry which is base of this reference according to the pleadings of the parties, which is very essential

issue in the case. Both the parties argued on the enquiry proceedings and the representative of the respondent argued on this issue that the workman was absent from duty on 24th April, 1979 at 7.40 a.m. On that day the administrator alongwith the Sanitary Inspector visited the city for the inspection and found the workman absent from the duty and charge-sheeted according to Ex. M-1. The workman, replied the charge-sheet which is Ex. M-2 as stated by the witness of the respondent as MW-1 Shri Krishan Lal, Secretary of the respondent Committee. After consideration of the charge-sheet and the reply, the domestic enquiry was constituted against the workman to enquire the allegation and Shri Bhim Singh, Overseer was appointed as enquiry officer, who hold enquiry against the workman. After giving the full opportunity he gave his findings against the workman. The workman was given show cause notice in this respect and after going through the records the Administrator Municipal Committee, Gurgaon terminated the services of the workman,—vide Ex. M-4 on 24th April, 1979. The workman was suspended because the administrator himself found the workman absent from the duty. Shri Krishan Lal was appointed as Enquiry Officer to hold enquiry against the workman, but on the objection of the workman Shri Bhim Singh was appointed in his place, to remove the objection of the workman. The workman did not raise any abjection before the enquiry officer and cross-examined the witnesses of the respondent and gave his own defence in full. The workman produced five or six affidavits of the person of the area which are also filed in the enquiry file. Though the affidavits were not legal in the eye of law because the affidavits did not bear the signature of the deponents. The workman was given all the opportunity in the enquiry proceedings and after that the enquiry officer found him guilty of the charges levelled against him. The workman went in appeal under the provisions of Safai Mazdoor Rules before the Collector Gurgaon. The Collector Gurgaon heard the appeal and decided on 3rd December, 1979 against the workman. All this fact were put before the Collector who decided the appeal after hearing the parties. After rejection of appeal this Court has no jurisdiction to entertain this reference as it does not come under the Industrial Disputes Act, 1947. The Administrator had no ill will against the workman. The workman was negligent in his duties even in the previous orders and warned so many times. The order of

termination of the workman after going through the whole file of the workman are justified.

The representative of the workman argued on this issue that the workman is an old employee having a service of 16 years in his credit of the Municipal Committee as Safai Mazdoor and in the election dated 25th March, 1979, he was elected as President of the IV Class Employees Trade Union of the Safai Mazdoor which is shown by Ex. W-4 and after becoming the President of the Union the workman raised a demand of the Safai Mazdoor and they placed a Dharna before the Municipal Committee, Gurgaon as admitted by MW-1 Shri Krishan Lal, Secretary of the Municipal Committee and due to the demand and Dharna the administrator annoyed with the claimant and on 24th April, 1979 with a intention to remove from the service inspected the city and visited the beat of the workman and marked him absent though he was present in the beat which is stated by the respondent witness Shri Babu Lal before the enquiry officer and which is also clear from the order of the Collector dated 3rd December, 1979. It is very clear from the statement of Shri Babu Lal, Safai Daroga of the Municipality, Gurgaon. He has stated statement that on 24th April, 1979 he was on his duty when the Sanitary Inspector and the administrator came in the car and asked him about the workman, whether Shri Chhannu Ram is on duty or not. The Safai Daroga has further stated that he told them that the workman is on duty then they asked the Safai Daroga to call Shri Chhannu Ram and he searched in the area and asked them that he was not there. From their they moved in the car along with Shri Babu Lal and they found the workman standing at the road with a felta in his hand near Dharam Shalla. The administrator call the workman, asked about his duty who told her that "We were deputed by the Safai Daroga and I am doing my duties". He argued that the statement of the respondent witness before the enquiry officer clears the position of the workman that he was present on duty at the time when the Administrator visited for instruction, whereas in the charge-sheet the Administrator has given that he was found absent from duty on 24th April, 1979 which is very wrong charge-sheet and the findings of the enquiry officer is also wrong and shows the partiality of the enquiry officer and also clears that the enquiry officer has acted according to inspection of the Administrator, who had the illwill against the workman due to his union activities and Dharna before the

Municipal Committee and so he gave the findings accordingly which was not according to the facts of the case. He further argued that in the enquiry the first witness came before the Enquiry officer was Sanitary Inspector, who has not stated this fact which has stated by Shri Babu Lal, Safai Daroga. The Safai Daroga has clearly stated that the workman was on duty at 7.40 a.m. and the Administrator called the workman and asked about his work, whereas the Sanitary Inspector is silent on this point. It is due to the fact that they did not want to disclose this fact which was disclosed by the witness Shri Babu Lal. So there is a difference between the two statements before the enquiry officer which cannot be believed at all. The workman produced four witnesses before the enquiry officer who were the co-workmen, who worked with the workman on that day and they were deputed to work collectively in the area. They have stated that the workman was working in the area from 7.00 a.m. to 1.00 p.m. with them and the Administrator came in the car with the Sanitary Inspector and called the workman to ask about the work. It clearly corroborate with the statement of Shri Babu Lal Safai Daroga and which cannot be dis-believed which corroborate with the respondent witness. It shows that the workman was present at the time given at the place of working. The workman also given the affidavits of 7 persons of the area in support of his case that the workman was present on duty on that day and requested the enquiry officer to give time to call these witnesses before the enquiry officer, but no time was given to the workman for calling these witnesses to depose the correct position. The persons who gave the affidavits are the respectable persons, who cannot be dis-believed and they have signed the affidavits which is arrested by the Oath Commissioner and these are the legal affidavits which cannot be neglected. He further argued that as stated by the respondent's representative that these affidavits did not bear signatures are wrong. These affidavits bear the signature of the deponent and they are legal one. He further argued that the respondent should have produced before this Court the beat register in which it would be clear about the duty of the workman with other workmen, but they have failed to produce in the Court because the workman was on duty. In the charge-sheet no area was mentioned. The charge-sheet also not according to the law, and it is vague document and the workman was

charge-sheeted only due to the annoyance of the officers due to his union activities. The workman was not given the list of witnesses for the documents in which the respondent has relied before the enquiry officer which is a essential element in the enquiry proceedings on which the enquiry can be visited. The Administrator and enquiry officer did not supplied the copy of the findings of the enquiry officer along with the show cause notice, and denied the opportunity to the workman for replying the show cause notice according to the fact given in the enquiry report, without which he was not able to give the reply in a proper manner so the opportunity was denied to the workman. He further argued that the past record of workman was quite satisfactory and at the time of awarding punishment of termination, this fact was not kept in mind by the punishing authority. He further argued that the respondent has mentioned in its written statement that this Court has no jurisdiction after decision of the appeal but they have given nothing in the regard in the arguments for this purpose. So this court has the jurisdiction to decide the matter in reference when it is sent by the Government for adjudication. He further argued that it is proved before the Court that the workman was victimised for the union activities, because Ex. W-4 the proceedings of election shows that the workman was elected as President of the union and he raised the demand for the Fourth Class Employees Safai Mazdoor Union and sit in a Dharna before the Municipal Committee for this demand which is admitted by he Secretary of the Committee as MW-1 in his statement, and it is again clear from the statement of Shri Babu Lal Safai Daroga before the enquiry officer that the Administrator asked specially the workman about this work and presence and no other persons were asked about their presence and duty. He was suspended charge-sheeted and enquiry was held and at last terminated due to all these reasons which is against the law.

After hearing the arguments of both the parties, and going through the file, carefully, I am of the view that the arguments put forwarded by the workman's representative have some force because the statement of Shri Babu Lal Safai Daroga as respondent witness before the enquiry officer clears the whole case. According to his statement the workman was present at the duty with a falta in his hand and the Administrator called the workman to enquire about his area and even after that he was

suspended of being absent without giving the area in the charge-sheet. Why the Administrator asked particular person about the area or the beat from the Safai Daroga who was on duty why he has not asked the other person for the areas and workman. It clearly shows that the arguments put forward by the representative of the workman seems to be correct, and the workman was wrongly terminated on a wrong findings of the enquiry officer. The enquiry officer had not cared to summons the witnesses which were requested by the workman and the enquiry officer did not give weight to the defence witnesses which were the co-workmen of the claimant who worked with him during the day and the witness of Shri Babu Lal Safai Daroga. He has given his findings on the statement of Sanitary Inspector who has stated that the workman was found absent from the duty. The enquiry held by the enquiry officer is not according to the principles of natural justice as he has not given the opportunity to the workman to be represented by some counsel or some other person to assist in the enquiry, which is very important matter and it was the question of life of the workman. The fault of the workman was not so big as punishment was given to the workman. For the absence of 10/20 minutes, the workman can be punished by stopping his increment and other punishment, but not big as termination. So the issue is decided in favour of the workman. The workman gave the demand notice on 21st October, 1980 after a lapse of more than one year and negligent to give this demand notice after such a long time. So he is entitled for his reinstatement with continuity of service, but half back wages.

This be read in answer to this reference.

Dated the 4th Mach, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 664, dated 19th March, 1982

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.